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## - Grounds for Divorce: What Must Be Proven -

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### **Cruel and Inhuman Treatment**

Cruel and inhuman treatment can involve either physical or mental cruelty. To be a reason for divorce, the treatment must have such a serious effect on the physical or mental health of the divorce-seeking spouse, that it is not safe or proper for the parties to continue to live together. Incompatibility between husband and wife is not a ground for a divorce. Some examples of acts that Courts have held to be cruel and inhuman treatment for divorce purposes include physical attacks upon a spouse; constant screaming, profanity or other verbal abuse; staying away from the house too often without an explanation; publicly flaunting a relationship with another man or woman; and wrongfully accusing the other spouse of adulterous relations with another man or woman. Intentional refusal by a spouse to have sexual relations may be considered cruel and inhuman treatment where it actually has a physical effect upon you. Alcoholism or drug addiction, or substance abuse by itself, usually is not a sufficient basis for divorce, unless your spouse becomes violent or abusive when under the influence so that you fear for your health and safety. Mental illness alone is not a sufficient basis for a divorce on the grounds of cruel and inhuman treatment, unless a spouse's other behavior could be defined as "cruel and inhuman treatment."

Each case, however, stands on its own facts. The Court decides whether not these facts justify a dissolution of the marriage. The acts or conduct on which the cruel and inhuman treatment is based must have occurred within five years prior to the commencement of the action to be considered by the Court, unless it is part of a continuous course of conduct. There are no defenses to cruelty. For example, mental illness, justification or forgiveness is not a defense.

### **Abandonment for One or More Years**

Abandonment means that your spouse has intentionally failed to fulfill a basic marital obligation or has left you without your consent, of his or her own accord (that is, you did not force or lock your spouse out of the house) and without justification. You must also establish that your spouse had no good reason for leaving (such as your ill-treatment or your consent), that he/she left with the intention of never returning, and did not offer in good faith to return. Unjustified refusal by a spouse to have sexual relations or where one spouse locks the other out of the house without good reason are considered a "constructive" abandonment. The abandonment must exist for a continuous period of at least one

year before the action is started. There is no statute of limitations on abandonment.

### **Imprisonment For Three or More Years**

Divorce on the grounds of imprisonment for three or more years means that your spouse actually must have served three years or more in prison before an action can be brought.

### **Adultery**

Bringing an action on the ground of adultery, is not a simple matter. You are not permitted to testify against your spouse, and you must have a witness ready to convince the Court that your mate did engage in sexual relations or sodomy with another person. Adultery is usually proven by circumstantial evidence, that is, by showing that your spouse had the opportunity, inclination and intent to engage in sexual relations with the other person.

There are four defenses to the charge of adultery, and if any of these are proven by your spouse, the Court will deny the divorce:

1. "Procurement" or "Connivance" - "Procurement" means that you actively encouraged your spouse to commit adultery. "Connivance" is similar to "collusion" or "consent" by a spouse to the adultery.
2. "Condonation" or "Forgiveness" - Having sexual relations with your spouse after your discovery of his or her adultery will be a defense to your divorce action based on adultery if you intended to forgive your spouse when you had the sexual relations.
3. "Statute of Limitations" - This means that there is a time limit (five years from your discovery of the first act of adultery) for you to bring the divorce action.
4. "Recrimination" - This defense means that you too, were guilty of adultery. No matter how convinced the Court is that adultery was committed by both parties, it is forbidden from granting a divorce on the grounds of adultery. Thus, if each spouse proves the adultery of the other, neither can obtain a divorce against the other on that ground.

### **Living Apart and Separation**

Living apart, without a written separation agreement, or a Court judgment of separation, is not a ground for a divorce. There are only two valid ways to dissolve a marriage if you are separated. Each requires separation of one or more years. You and your spouse must live apart after signing a written contract of separation, or under a Court judgment of separation.

## Separation Agreement

A Separation Agreement is a detailed contract which should be prepared by attorneys, where the parties agree to live separate for the rest of their lives. It should set forth the respective rights and duties of husband and wife with respect to the custody of children, visitation rights, support payments, distribution of property, and all other matters pertaining to the marital relationship.

Certain vital formalities must be carefully followed, or the written agreement will not qualify as a ground for divorce. It must be signed and acknowledged.

The agreement, or a memorandum of separation, must be filed with the Clerk of the County where either spouse lives before an action for divorce may be brought. At the end of one year from the date of the agreement, either spouse may sue the other for a "no fault" divorce.

It must be proven to the Court that the agreement was properly signed and acknowledged and was properly filed; that the spouses lived apart during the period of the agreement up to the time of the divorce action; and that the Plaintiff "substantially complied" with the terms of the separation agreement.

## Separation Judgment

Another form of separation is through a Judgment of Separation granted by the Supreme Court. This judgment is based on the same four "fault" grounds as for divorce. However, the abandonment may be for less than one year. In addition, "non-support" is a ground for a judgment of separation, although not for a judgment of divorce.

One year after the filing of the Court's judgment of separation, either party may sue for a "no-fault" divorce, based upon one year of living apart. A divorce does not occur automatically after a year. Court action must be taken.